

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NORTH CAROLINA
ASHEVILLE DIVISION
1:19-cv-00224-MR

COREY DELON GREENE,)
)
Plaintiff,)
)
vs.) ORDER
)
KENNETH LASSITER, et al.,)
)
Defendants.)
)

THIS MATTER is before the Court on its own motion on the filing of an Answer out of time by Defendant Kenneth Lassiter without leave of court to do so.

Also pending before the Court is Plaintiff's "Request [for] Entry of Default" as to Defendant Lassiter [Doc. 36], Plaintiff's Motion for Default Judgment as to Defendant Lassiter [Doc. 38], Plaintiff's "Application to the Court for Default Judgment" as to Defendant Lassiter [Doc. 41], and Plaintiff's "Request [for] Entry of Default Judgment" as to Defendants Brown, Ishee, Moose, Rich, and Cobb [Doc. 42], which is in substance a motion for entry of default and will be treated as such.

I. BACKGROUND

On July 18, 2019, pro se Plaintiff Corey Delon Greene (“Plaintiff”), a prisoner of the State of North Carolina currently incarcerated at Avery/Mitchell Correctional Institution located in Spruce Pine, North Carolina, filed a Complaint pursuant to 42 U.S.C. § 1983 against Defendants Kenneth Lassiter, Tim Moose, Todd Ishee, Sarah Cobb, Betty Brown, and Chris Rich. [Doc. 1]. Before initial review was conducted, Plaintiff filed an Amended Complaint. [Doc. 16]. Plaintiff’s Amended Complaint survived initial review as to all Defendants. [Doc. 18]. Thereafter, Plaintiff sought leave to file a Second Amended Complaint, which was granted. [Docs. 25, 27]. Waivers of service were returned executed for Defendants Brown, Ishee, Moose, Rich, and Cobb, making their Answers due on June 2, 2020. [Doc. 29]. A waiver was not obtained for Defendant Lassiter. [See Doc. 30]. Thereafter, the U.S. Marshal obtained service on Defendant Lassiter on April 23, 2020, making his Answer due on May 6, 2020. [See Doc. 34]. On June 2, 2020, all Defendants moved for an extension of time to until August 2, 2020 to answer Plaintiff’s Second Amended Complaint. [Doc. 37]. The Court granted the motion as to Defendants Moose, Ishee, Cobb, Brown, and Rich, but denied the motion without prejudice as to Defendant Lassiter

because the motion was filed after Defendant Lassiter's deadline to file his Answer had expired without seeking leave to do so. [Doc. 39]. In the meantime, Plaintiff had filed his motion for entry of default and motion for default judgment as to Defendant Lassiter. [Docs. 36, 38]. On June 5, 2020, Defendant Lassiter filed an Answer to Plaintiff's Second Amended Complaint [Doc. 40] but failed to seek leave of Court to file the Answer out of time. Plaintiff has since filed a second motion for default judgment as to Defendant Lassiter [Doc. 41]¹ and a motion for entry of default as to Defendants Moose, Ishee, Cobb, Brown, and Rich [Doc. 42].

II. DISCUSSION

Federal Rule of Civil Procedure 55(a) allows for the entry of default against a defendant who fails to "plead or otherwise defend." Fed. R. Civ. P. 55(a). At the time Defendant Lassiter filed his Answer, default had not yet been entered by the Clerk. Defendant Lassiter, however, failed to move to file his Answer out of time. Because default has not been entered against Defendant Lassiter and because resolution of disputes on the merits is highly favored, see Tolson v. Hodge, 411 F.2d 123, 130 (4th Cir. 1969), the Court will strike Defendant Lassiter's Answer and will allow

¹ The Court cautions Plaintiff against filing duplicative motions. Filing a second motion requesting the same relief as a previous, still pending motion only serves to further clog the Court's docket, slow the judicial process, and often create confusion for the Court. Further, duplicative motions do nothing to advance the Plaintiff's cause.

Defendant Lassiter to seek leave of Court to file his Answer out of time, showing good cause for the delay. The Court will also, therefore, deny Plaintiff's motion for entry of default and motions for default judgment against Defendant Lassiter without prejudice.

As to Plaintiff's motion for entry of default against Defendants Moose, Ishee, Cobb, Brown, and Rich, the deadline for these Defendants to answer or otherwise plead in response to Plaintiff's Second Amended Complaint is August 2, 2020. [Doc. 39]. Plaintiff's motion, therefore, is premature and will be denied. See Fed. R. Civ. P. 55(a).

III. CONCLUSION

In sum, the Court will strike Defendant Lassiter's Answer [Doc. 40] and allow Defendant Lassiter to seek leave of Court before filing his Answer out of time. The Court will deny Plaintiff's motions [Docs. 36, 38, 41, 42] without prejudice for the reasons stated in this Order.

ORDER

IT IS THEREFORE ORDERED that Defendant Lassiter's Answer [Doc. 40] is **HEREBY** stricken from the docket in this matter. Defendant Lassiter must seek leave of Court before filing his Answer out of time.

Plaintiff's motions [Docs. 36, 38, 41, 42] are **DENIED WITHOUT PREJUDICE** in accordance with the terms of this Order.

IT IS SO ORDERED.

Signed: June 17, 2020



Martin Reidinger
Chief United States District Judge 